

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19808**
Docket Number CL-20064

Frederick R. **Blackwell**, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (CL-7236)
that:

1. The **Carrier** violated the Clerk's **Agreement**, when it dismissed Janitor White from service on December 23, 1971.

2. Claim that the Carrier's action was arbitrary and an abuse of discretion.

3. Claim that Janitor White be restored to service with seniority rights unimpaired and compensated for all wage **losses** sustained, effective April 25, 1972.

OPINION OF BOARD: Following hearing the claimant was dismissed, effective December 23, 1971, for (1) engaging in **outside** employment while marked off for "personal business" and (2) failure to furnish medical evidence respecting absence from **work** while marked off for sickness. The Petitioner asserts that claimant is illiterate and that such constitutes a sufficient mitigating fact to render the dismissal unjustified.

Claimant held a regular relief assignment as janitor when this dispute **arose**. He marked off because of "personal business" from November 5 to 13, 1971, and because of sickness from **November** 13 to December 16, 1971. On this last date Carrier Learned that claimant had worked as a longshoreman on November 11, 12, and 13, 1971.

There **was** no problem about claimant being off on **November** 5 and 6 because of personal business; however, on November 7, at **1:30** a.m., he phoned in to **mark** off for personal business "until further notice". Between November 7 and 13, Mr. H. C. Mills, Supervisor Car Operation, called claimant's phone several times **and** Left call-back messages. On November **13** Claimant phoned Mr. Mills and **was** told by Mr. Mills that indefinite leave for personal business was not **permitted**. Claimant then said he **was** sick, whereupon Mr. Mills told him to provide medical evidence of sickness upon return to work. Claimant did not return to work promptly, so Mr. Mills phoned him and left further call-back messages on November 29 and 30. On December 3, **1971**, Mr. Mills wrote claimant that, if medical evidence of sickness was not provided by December 12, his company file would be closed. Claimant did phone Mr. Mills on December 15, 1971 to say he was still sick and, due to a change of address, had just received the December 3 letter.

At the hearing claimant submitted a medical statement showing that he had been under a doctor's care since November 12, 1971. He also stated that he could not read. However, he said he had completed the seventh grade in school and had stated in a prior hearing that he had read the bulletin books and bulletins as posted.

In appraising these facts it becomes quite clear **that, while** marked-off for personal business, claimant did not protect his regular **assignment with** Carrier on November 11, 12, and 13. Yet, on these same days, i.e., November 11 and 12, and **a part** of November 13, claimant performed longshoreman work for another company. Thus, there is no doubt that claimant violated Carrier's rule against outside employment. On the sickness part of the dispute, the claimant's medical evidence showed he was under a doctor's care on November 12. However, other evidence conclusively showed that claimant had worked as a longshoreman on November 12; this raised a question about the general integrity of the medical evidence, and Carrier apparently treated the medical evidence as having no probative value. We do not disagree. On the illiteracy issue, the **Petitioner's** submission contains strong evidence that claimant was in fact illiterate. However, this evidence was not submitted until after the conclusion of the **investigative** hearing and, consequently, cannot be considered in our review of the **finding** and Carrier's action thereon. Awards No. 15574 (Ives), First Division Award 16411 (Daugherty) and Second Division Award 2293 (**Wenke**). Carrier determined on the basis of the hearing record that claimant was not illiterate to the degree asserted by Petitioner and we find nothing in the record to suggest that this determination was unreasonable or arbitrary.

On the record as a whole there is substantial evidence to support Carrier's action and we shall deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the **whole** record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction **over** the dispute involved herein; and

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The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST: *E. A. Killen*
Executive Secretary

Dated at Chicago, Illinois, this **20th** day of **June** 1973.